

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ODISCIOUS DOZIER,

Plaintiff,

v.

DAVID ARMSTRONG,

Defendant.

CASE NO. C24-5046 BHS

ORDER

THIS MATTER is before the Court on defendant David Armstrong's motion to set aside default and to dismiss for lack of timely service, Dkt. 11. Pro se plaintiff Odiscious Dozier sought and obtained an order of default, based on his contention that he personally served Armstrong on February 23, 2024. Dkts. 8 and 9.

Armstrong contends and demonstrates that he is an officer or employee of the United States, requiring Dozier to serve the United States Attorney's Office for the Western District of Washington or the Attorney General of the United States, under Federal Rule of Civil Procedure 4(i). He also argues that, for the same reason, Dozier is not entitled to a default judgment unless he "establishes a claim or right to relief by evidence that satisfies the court," which has not yet occurred. Dkt. 11 at 1 (citing Fed. R.

1 Civ. P. 55(d)). Armstrong's motion to dismiss argues that under Rule 4(m), Dozier had
2 90 days from the date of filing to accomplish service, and that period has long since
3 expired. It asks the Court to dismiss Dozier's complaint. *Id.*

4 Dozier has not responded to the motion.

5 Armstrong's motion to set aside the default is **GRANTED**, and the court's order of
6 default, Dkt. 9, is **SET ASIDE**. Dozier attempted to effect service, and it appeared that
7 he had. Armstrong's Rule 4(m) motion to dismiss is **DENIED** without prejudice. Dozier
8 shall properly serve his summons and complaint, and file proof of service, within **30**
9 **days** of this Order. If he does not, the case will be dismissed for failure to prosecute
10 without further notice.

11 **IT IS SO ORDERED.**

12 Dated this 25th day of July, 2024.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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